

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH G. DUNBAR,

Petitioner/Plaintiff,

v.

RAYMOND BOOKER, et al.,

Case No. 07-10993

Respondents/Defendants.

Honorable Patrick J. Duggan

ORDER DENYING WITHOUT PREJUDICE
CERTIFICATE OF APPEALABILITY

At a session of said Court, held in the U.S.
District Courthouse, City of Detroit, County of
Wayne, State of Michigan, on August 14, 2007.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On March 8, 2007, Petitioner and Plaintiff Joseph G. Dunbar (“Petitioner”), filed a *pro se* pleading consisting of a habeas corpus petition, brought pursuant to 28 U.S.C. § 2241(c)(3), and a civil rights complaint, brought pursuant to 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 99 S. Ct. 1999 (1971).¹ The pleading challenges Petitioner’s state conviction for first-degree criminal sexual

¹Petitioner filed an amended pleading on March 28, 2007.

conduct.² In addition, the pleading alleges that the Respondents and Defendants have conspired to deprive Petitioner of his constitutional rights.

On June 5, 2007, this Court issued an Opinion and Order transferring Petitioner's second or successive habeas petition to the Sixth Circuit pursuant to 28 U.S.C. § 1631 and dismissing Petitioner's civil rights complaint without prejudice due to Petitioner's failure to prepay the filing fee. This Court also denied Petitioner's Motion for Reconsideration/Rehearing on July 20, 2007. Petitioner now requests a certificate of appealability from this Court. 28 U.S.C. § 2253(c)(1)(A).

In this case, the Court has not ruled on Petitioner's second or successive habeas petition. Instead, it transferred Petitioner's second or successive habeas petition to the Sixth Circuit pursuant to 28 U.S.C. § 1631. *See* 28 U.S.C. 2244(b)(1). If this Court receives authorization from the Sixth Circuit to consider Petitioner's second or successive application, *see* 28 U.S.C. 2244(b)(2)-(3), and denies Petitioner's application, then Petitioner can seek a certificate of appealability as to the claims presented in his second or successive habeas petition. Unless and until all of the above-mentioned events occur, this Court cannot grant a certificate of appealability.

Accordingly,

IT IS ORDERED that Petitioner's motion for a certificate of appealability is **DENIED WITHOUT PREJUDICE**.

²Petitioner was convicted following a jury trial on June 25, 1991. As a result, he was sentenced to 40 to 60 years imprisonment.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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